IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Revision No.4065 of 2004

Date of decision: 12.10.2006

Ram Singh

..... Petitioner.

Versus

Puran Singh etc.

..... Respondents.

CORAM: HON'BLE MR. JUSTICE P.S. PATWALIA

Present:- Mr.Manohar Dadwal, Advocate
for the petitioner.

Mr. R.K. Joshi, Advocate
for the respondent.

P.S. PATWALIA, J. (ORAL)

The present revision petition has been filed against the order dated 02.08.2004 passed by learned Civil Judge (Junior Division), Dasuya vide which an application for impleading L.R.s of Puran Singh, defendant no.1 was declined.

A reading of the order of learned trial Court declining the application would show that the application was dismissed on the ground that it was settled law that no suit can be instituted against a dead person. Still further the trial court has noted that defendant Nos. 3,4,6 and 9 filed a

written statement taking preliminary objections that defendant No.1 had died before the institution of the suit. Thereafter issues were framed and the suit was fixed for evidence of the plaintiff. Five adjournments were granted to the plaintiff to produce evidence but not even a single witness was examined. It is only at that stage when application was moved for impleading L.R.s of defendant no.1.

Learned counsel for the petitioner contends that the suit is for possession of land as detailed in title. The suit is filed against nine persons and the interest of all the nine is common. In fact defendant Nos.1 to 7 are all brothers being sons of one Gulzar Singh son of Lakhan Singh. He submits that even though it is correct that a suit against a dead person is nullity but in the present case defendant no.1 had common interest along with other defendants, who had been impleaded as a party. He submits that even if the present application is dismissed, it would not result in dismissal of the suit. He therefore submits that since the interest of defendant no.1 is common with the others, the trial Court should have allowed the application for impleading legal representatives of defendant no.1. For this proposition, he has relied upon a judgment of this Court in **Bhupinder Singh v. Jagrup Singh, 1999(1) PLR 407**. In particular reliance has been placed on the following observations:-

> "I have heard learned counsel for the parties at some length and in view of the peculiar facts and circumstances of these cases, I am of the considered view that the impugned order does not suffer from any error of jurisdiction or otherwise apparent on

the face of the record and as such do not call for interference. It is true that suit against a dead person is a nullity and no suit so could be instituted, but in the present case other parties, who have common interest along with these defendants had been impleaded as parties as such the character of the suit is no way effected and the suit cannot be termed as nullity. At best even if the applications were dismissed it could not result in dismissal of the suit by itself. On the other hand, it would be a question to be gone into whether the suit would be bad for non joinder of necessary or proper parties. By allowing the application, all that has been done by the learned trial Court is that, it had ordered the impleadment of the legal representatives of the deceased defendants in each suit. In any case, the applications and even the suits itself were filed after the amendment in the C.P.C. By which the concept of abatement of a suit or legal proceeding has lost its effective meaning and does not substantially take away or give right to either parties of the proceedings (Rule 2-A and 2-B added after Rule 2 of Order 22 of the CPC by the Punjab and Haryana High Court)."

On the other hand learned counsel for the respondents submits that the view taken by the trial Court is absolutely correct. The application was filed after almost two years from the filing of the suit. Inspite of the fact that an objection to this effect had been taken by the defendant at the very out set by filing reply.

After hearing learned counsel for the parties, I find merit in the submission raised by learned counsel for the petitioner. In fact the contention raised by the learned counsel for the petitioner is covered by the ratio of law in Bhupinder Singh's case (supra). Therein also a view was taken by this Court that since the defendant who was stated to be dead had a common interest with the other defendants, who had been impleaded as parties an application to implead his legal heirs deserved to be allowed. Further this Court found that character of the suit was in no way affected by impleading the legal heirs of a person who was dead if his interest was common with the other defendants and further even if such an application was dismissed it would not result in dismissal of the suit. Therefore, the order of the trial Court allowing the application in that case was upheld by this Court.

I also agree with the aforementioned observations. Therefore, the application filed by the petitioner is allowed. The order dated 02.08.2004 declining the application is set aside. The legal representatives of defendant No.1 are permitted to be impleaded as defendants in the suit.

October 12 , 2006 **(P.S. PATWALIA)**
dinesh **JUDGE**